

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Application of Wisconsin Energy Corporation  
For Approval to Acquire the Outstanding Common  
Stock of Integrys Energy Group, Inc.

Docket No. 9400-YO-100

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**INITIAL BRIEF OF THE  
INTERNATIONAL UNION OF OPERATING ENGINEERS - LOCAL 420**

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**I. INTRODUCTION**

The International Union of Operating Engineers -Local 420 ("Local 420") is a labor union representing approximately 1800 members who perform equipment operation, maintenance, and other skilled trade services at commercial facilities, schools, utilities, refineries and other industries throughout Wisconsin (Direct-IUOE Local 420-Maierle-1). Local 420's members include employees of the utility subsidiaries of both Wisconsin Energy Corporation ("WEC") and Integrys Energy Group, Inc. ("Integrys").

Unlike many of the intervenors participating in this docket, Local 420 is not opposing WEC's application to acquire Integrys. Rather, it is recommending that the Commission approve the application with the following conditions: first, that WEC maintain the current levels of full time equivalent ("FTE") employees employed by WEC's subsidiary utilities serving Wisconsin ratepayers for a period of five years following the acquisition or at least until its subsidiary utilities obtain approval from the Commission to adjust the rates charged to customers. Second, Local 420 requests that

the Commission direct WEC to meet and confer with IUOE-Local 420 and other labor unions representing employees of WEC and its subsidiaries regarding post-acquisition workforce planning. These modest conditions are not burdensome and will help to ensure that Wisconsin ratepayers continue to receive reliable and cost-effective services from WEC utilities while the Company develops its post-acquisition workforce plans.

**II. THE COMMISSION SHOULD APPROVE WEC'S APPLICATION TO ACQUIRE INTEGRYS WITH THE CONDITION THAT WEC MAINTAIN THE CURRENT FTE LEVELS OF ITS SUBSIDIARY UTILITIES FOR FIVE YEARS OR AS LONG AS THE CURRENT RATES ARE MAINTAINED.**

In its application to acquire Integrys, WEC promises with regard to its Wisconsin workforce only that any reductions of the workforce will occur through attrition, not layoffs. WEC does not commit to retaining the FTE levels of utility employees at their current levels. This is not adequate to ensure that the ratepayers' interests and the public interests are protected following the proposed acquisition.

Requiring WEC to maintain current FTE levels in its subsidiary utilities will help to ensure that ratepayers continue to receive the level of services they are paying for under current rates. In WPS's rate case for 2015, WPS provide its projection of the headcount or FTE it believed it would require in the 2015 test year (Direct-IUOE Local 420-Maierle-7, Ex.-IUOE Local 420-1). WPS represented to the Commission that it needs between 1417 and 1444 monthly FTE to deliver services to ratepayers in 2015, including both regular and seasonal/temporary staff. WPS indicated it needs a greater number of FTE for the 2015 test year than the actual monthly headcounts reported by WPS in 2013. *Id.* WPS reported actual headcounts of 1,211 to 1,278 in 2013, including both regular and

seasonal/temporary staff (*Id.*). Thus, WPS's data shows that it has determined a need to increase its FTE count by approximately 160 to 200 FTE, or 12 to 15 percent, in order to continue to provide reliable services to its ratepayers.

The Commission's final decision in the WPS rate case in docket 6690-UR-123 did not order WPS to reduce its revenue requirements related to its labor costs, or otherwise to reduce its projected FTE, counts for the 2015 test year. *See* Docket 6690-UR-123, Final Decision.

Similarly, in WE Energies' rate case for 2015, WE Energies provided the Commission with its projection of the employee headcount it believed it would require in the 2015 test year (Direct-IUOE Local 420-Maierle-9-10, Ex.-IUOE Local 420-2). WE Energies reported an average monthly headcount of 4,143 for Test Year 2015. *Id.* It reported an actual average monthly headcount of 4,063 for 2013 (*Id.*). Thus, WE Energies data shows that it has determined that it needs to increase its monthly average FTE count by 80 FTE or approximately 2 percent.

To explain the increase in the projected 2015 headcount over the 2013 actual monthly headcounts and its current staffing levels and recruitment plans, WE Energies stated that it "saw an exceptionally high number of retirements" in 2013, with retirements jumping to 204, "more than a 43% increase in retirements over the three year average of 142 per year" from 2010 to 2012. *Id.* WE Energies stated that it is "actively engaged in the process of replacing those positions." *Id.* It stated that "[b]ecause we cannot immediately replace a retired employee, 2013 average number of employees and actual number of employees is artificially low. They will remain

artificially low until we can re-staff through our normal hiring process.” *Id.* WE Energies also provided additional detail on the workforce planning it conducted to determine its needs to increase and decrease staffing in particular areas:

We forecast an increase in staffing for the Generation business area of 44 positions vs. our average headcount for 2013. **We evaluate each vacancy to determine if the position must be filled for safety and/or reliability purposes.** We have determined several positions where our staffing levels will decrease from the 2013 average because of these vacancy evaluations. Four areas which we will need to fill positions include, among others, Plant Mechanics, Control Room Operators, Plant Operators and General Laborer positions in Power Generation. The Company added several employees in these positions in early 2014 and hopes to continue to fill positions throughout 2014.

*Id.*

The Commission’s final decision in the WE Energies rate case in docket 5-UR-107 did not order WE Energies to reduce its revenue requirements related to its labor costs, or otherwise order WPS to reduce its projected FTE counts for the 2015 test year. WEC witness Scott Lauber acknowledged that the workforce numbers provided to the Commission in WE Energies’ recent rate case are still accurate projections for Test Year 2015, after the approval of the acquisition (Tr. 161:3-6).

The record shows that WEC committed to maintaining current FTE levels of its employees in the state of Illinois in the proceedings before the Illinois Commerce Commission. In its application in the Illinois docket, WEC agreed to maintain at least 1,953 FTE employee positions in Illinois for two years after the closing of the Transaction (Ex.-IUOE Local 420-4). When asked by the Illinois Attorney General how the Joint Applicants intended to maintain the 1,953 FTEs employee positions in Illinois, how many positions would be allocated to each of the joint applicants’ two Illinois

utilities and to other Integrys entities, and how quickly the Joint Applicants would fill positions at each entity, the Joint Applicants stated that “[i]n the event vacancies occur that cause the number of FTE employee positions in Illinois to be reduced to below 1,953 during the period of the commitment . . . the Joint Applicants would seek to fill the vacant position(s) as expeditiously as possible, using the normal means of advertising and/or recruiting to identify a person interested in and qualified for the position(s) in question.” (Ex.-IUOE Local 420-4).

Notably, WEC has not only declined to make a similar commitment to maintain a specific level of FTE employees in its Wisconsin utility subsidiaries or other Wisconsin-based work sites, but it has declared its opposition to the Commission including such a condition in granting approval of the application (Rebuttal-WEC-Leverett-16). WEC stated that it opposed the condition of maintaining a specific level of FTE employees in its Wisconsin utilities because a “five-year commitment . . . is simply too long, and would hamstring our ability to prudently manage the company in the best interests of ratepayers and the public. A two-year commitment strikes an appropriate balance between providing certainty to represented employees and looking out for the best interests of customers” (Rebuttal-WEC-Leverett-16). However, Mr. Leverett failed to acknowledge that the Company has not made a two-year commitment to maintain its current level of FTE. Its commitment is much more limited. WEC promised only that it would not lay off current represented employees during the two years following the acquisition and would reduce the workforce only through attrition, i.e., not filling positions that became vacant due to retirements and other employee departures

(Rebuttal-WEC-Leverett-15). As WE Energies acknowledged in its recent rate case, it has seen an “exceptionally high number of retirements” recently, with retirements increasing by more than 43% in 2013 as compared to the average number from 2010 to 2012 (Direct-IUOE Local 420-Maierle-9-10, Ex.-IUOE Local 420-2). The retirement of 204 workers in 2013 equates to about 5 percent of the FTE employed by WE Energies in a single year and does not account for other voluntary departures from the workforce. The Company’s promise to reduce the workforce only through “attrition” thus amounts to *carte blanche* for the Company to reduce the workforce by ten percent or more, despite the representations by both WE Energies and WPS that the utilities will require *more* employees to deliver reliable services to their ratepayers in Test Year 2015.

The Company’s justification for its refusal to commit to maintaining its current FTE level after the acquisition is not persuasive. WEC witness Scott Lauber testified that “the Transaction is not motivated by a desire to consolidate operations and rapidly achieve large cost savings as a result of massive reductions in the work force” (Direct-WEC-Lauber-5). Mr. Lauber also testified that “the Transaction is not motivated by a desire to immediately -- or even in 6 the medium term -- significantly reduce employee headcount” (Direct-WEC-Lauber-7). These reasons do not suggest that maintaining at least its current levels of FTE would be burdensome to the Company or harmful to ratepayers, the public, or the shareholders. Rather, the Company’s rationale demonstrates that the Company would *not be harmed* by a requirement to maintain its workforce at current levels of FTE post-acquisition.

Likewise, Mr. Lauber testified at the technical hearing that the situation in Illinois is “a little different” than in Wisconsin because the Company is moving its headquarters out of Illinois into Wisconsin (Tr. 163). He acknowledged that moving the headquarters would actually reduce the number of Company employees in Illinois, but for the Company’s agreement to a condition to maintain its current FTE count in Illinois (Tr. 163). He testified that the Company is not planning to move operations from Wisconsin to another state (Tr. 163). Again, these reasons do not suggest that a commitment to maintain the current FTE count would be burdensome or harmful to ratepayers, shareholders, or the public. At best, the Company’s reasons demonstrate that the Company would not be harmed by a condition requiring it to maintain its current levels of FTE; at worst, the Company’s rationale shows that it will accept such a condition only if politically pressured (or ordered) to do so.

The Company also opposed the condition of maintaining its FTE as proposed by Local 420 on grounds that a “five-year commitment . . . is simply too long, and would hamstring our ability to prudently manage the company in the best interests of ratepayers and the public” (Rebuttal-WEC-Leverett-16). While Mr. Leverett was comparing apples to oranges by equating the Company’s commitment to reduce the workforce by attrition to a requirement to maintain current FTE levels, the Company nevertheless appears to concede that a two-year commitment relating to its workforce would “strike[] an appropriate balance between providing certainty to represented employees and looking out for the best interests of customers” (Rebuttal-WEC-Leverett-16).

Local 420 did not pull its proposal for a five-year commitment out of thin air. Its proposal for a five-year commitment is a logical extension of the Company's own representations that it does not expect the acquisition to generate savings until after a five- to ten-year ramp up period (Tr. 170:12-21). WEC witness Mr. Lauber further admitted that "the transaction is not motivated by a desire to immediately or even in the medium term significantly reduce employee headcount," and that "we're not looking in the first couple years, it's more through **attrition in longer term**. Medium term would be in that five-year time frame" (Tr. 171:10-13). Thus, by the Company's own admissions, it does not foresee generating savings within the first five years after the acquisitions and believes the projected savings will be generated through "attrition in the longer term," which it identified as the five-to-ten year time frame.

A requirement that WEC maintain the FTE levels of its represented employees at the Wisconsin work sites of the Company, its subsidiaries, and affiliates at the levels reported by WE Energies and WPS in the 2015 rate cases will ensure that Wisconsin ratepayers and the public will continue to receive the safe, reliable, adequate and cost-effective services that they are paying for during the transition period following the merger. An order point directing WEC to maintain FTE levels for five years following the proposed acquisition will ensure that WEC will not unnecessarily hold positions vacant during the relatively short term during which WEC does not anticipate that the transaction will result in cost savings, and will ensure that any future reductions in workforce occur systematically in accordance with a workforce plan. To the extent that WEC is implying that it may be able to achieve cost savings through employee attrition



in a shorter timeframe, it has presented no evidence in this proceeding showing that potentiality. Nevertheless, to the extent that this is a valid consideration, Local 420 recommends that the Commission indicate in its order that the Commission will amend the condition regarding maintaining the workforce if the Company submits evidence demonstrating that it will obtain costs savings, for the benefit of ratepayers, by reducing the workforce within a period of less than five years.

**III. THE COMMISSION SHOULD APPROVE WEC'S APPLICATION TO ACQUIRE INTEGRYS WITH THE CONDITION THAT WEC MEET AND CONFER WITH LOCAL 420 IN DEVELOPING A POST-ACQUISITION WORKFORCE PLAN.**

Workforce planning is planning conducted by an organization to ensure that its workforce is aligned with the organization's business plan (Tr. 64:22-25, 65:1-2). It may include the projection of likely retirements and other attrition in the workforce, planning to expand or reduce the workforce, recruitment and training of new employees, and plans to fill vacancies or to eliminate vacant positions (Tr. 65:3-14).

Local 420 participates in many workforce initiatives to advance and protect the interests of the public and ratepayers, which align with the interests of its members (Direct-IUOE Local 420-Maierle-5). Local 420 is currently developing a comprehensive workforce recruitment and training program with WE Energies and is discussing a workforce initiative with WPS (*Id.*). Local 420 sponsors POWER 420, a safety program that promotes and tracks job site safety reporting. (*Id.*). The union has a "Blue Hat" safety representative assigned to the Weston Power Plant in Wausau (*Id.*). It participates in a multitude of company-sponsored safety programs and initiatives (*Id.*). Protecting

the health and safety of its members is an extremely high priority for Local 420 (*Id.*).

The safety programs sponsored by the company and the union benefit the public and ratepayers in the form of more reliable and cost-effective service (*Id.*). Local 420 strongly believes that these safety programs and initiatives are most effectively implemented and observed by a fully-staffed permanent workforce that is not eroded by unfilled vacancies (*Id.*).

WEC acknowledges that it conducts workforce planning and that it will continue to engage in workforce planning after it acquires Integrys, assuming the application is approved (Tr. 65:21-25, 66:1-4). WEC acknowledges that it has not done any workforce planning to determine its workforce needs over the entire organization after acquiring Integrys and has not yet “developed a template for a workforce plan” after the acquisition (Tr. 65:24-25, 66:1-11).

As acknowledged by WEC witness Allen Leverett, WEC fosters a positive working relationship with Local 420 and the other unions representing its employees. WEC executives regularly consult with union leadership on a variety of issues (Rebuttal-WEC-Leverett-15). Mr. Leverett testified that he and other company executives periodically meet with the leadership of Local 420 and other unions (Tr. 66:20-25). He and other WEC executives meet with the union leadership when the Company makes decisions about the workforce (Tr. 67:1-6). At those meetings, WEC executives allow the union leaders to ask questions about the Company’s plans, to provide feedback about the Company’s plans, and to make suggestions for modifications about the plans or to provide other input (Tr. 67:7-14). This practice of

meeting and conferring with union leadership is not collective bargaining (Tr. 67:18-21). The Company retains its management rights and responsibilities to make decisions regarding the workforce, even when it meets and confers with union leadership regarding its plans for the workforce (Tr. 67:15-17).

Mr. Leverett testified that WEC does not expect to change the relationship with the unions after the acquisition and that the Company will continue to have meetings with union leadership when it anticipates making organizational changes that affect its workers (Tr. 68:1-5). It will continue to allow the union leadership to ask questions about the Company's plans and to provide feedback or input into the Company's plans (Tr. 68:12-20).

Given WEC's apparent commitment to maintaining a positive relationship with its represented workforce and its commitment to workforce planning, it is mystifying that WEC objects to Local 420's proposal that the Company meet and confer with Local 420 and the leadership of other unions regarding its post-acquisition workforce planning, as a condition of approval of its application. WEC objects to this proposed condition solely on grounds that a requirement that it "meet and confer" with union leadership regarding its "post-acquisition workforce plans" is "poorly defined" and "too vague" (Rebuttal-WEC-Leverett-15). Ironically, Local 420 specifically crafted its proposal in general terms out of deference to WEC's management rights. In any event, the proposal by Local 420 is not "vague" or "poorly defined." Local 420 is proposing only that WEC continue its current practice of maintaining productive labor-management relations by holding meetings with union leadership before implementing

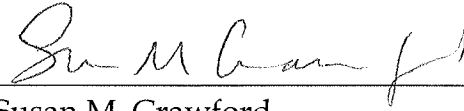
management decisions affecting the workforce and that it allow union leadership to ask questions, comment, and offer feedback and input as to those decisions, as described in the colloquy with Mr. Leverett at the technical hearing (Tr. 66-68). WEC acknowledged that it intends to do just that.

An order by the Commission imposing a condition that WEC meet and confer with union leadership on its post-acquisition workforce plans simply commits WEC to do what WEC has indicated it intends to do. WEC has identified no legitimate reason for opposing this condition. Local 420 believes that the proposed condition would benefit the ratepayers and the public by ensuring that WEC maintains positive management-labor relations, that it obtains the input from its frontline workers regarding how its plans may affect both the employees and the delivery of energy services to ratepayers, including potential impacts of workforce decisions on worker safety, timely and reliable service, employee morale, and other important issues.

Local 420 urges the Commission to adopt the proposed conditions to ensure that the proposed acquisition of Integrys by WEC does not have a negative effect on the delivery of timely, reliable, cost-effective services to Wisconsin ratepayers.

Respectfully submitted this 30<sup>th</sup> day of March, 2015.

CULLEN WESTON PINES & BACH LLP

A handwritten signature in cursive script, appearing to read "Susan M. Crawford", is written over a horizontal line.

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